IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

APPEAL NO.362 OF 2006
IN
NOTICE OF MOTION NO.3407 OF 2002
IN
SUIT NO.3940 OF 2002

Jayantilal M.Jain .. Appellant
V/s
M/s.D.Vasantrai & Co. .. Respondents

Mr.N.N.Vaishnawa for the Appellant.
Ms.Yasmin Tavaria i/by Mr.R.A.Barot for Respondents.

CORAM: DR.S.RADHAKRISHNAN &
S.J.VAZIFDAR, JJ.

DATE : 05.05.2006.

P.C.:

1. Heard the learned Counsel for the Appellant and the learned Counsel for the Respondents. Appeal is admitted. The learned Counsel for the Respondents waives service. By consent Appeal is taken up for hearing.

2. By this Appeal the Appellant is challenging an order dated 21st April, 2006 whereby the learned Single Judge has appointed the Court Receiver with regard to the suit premises and has directed the Court Receiver to take possession of the suit premises from the Appellant and hand over the same to the Respondent herein.

3. After hearing the learned Counsel for the parties

for sometime, both the parties have agreed for the following order being passed, however, without prejudice to their rights and contentions:-

(i) The Court Receiver shall permit the Appellant to continue in possession of the suit premises as an agent of the Court Receiver on payment of royalty that may be fixed by the Court Receiver on the basis of market rate, but subject to minimum of Rs.7770/-

(ii) Out of the royalty amount, the Court Receiver shall pay the Respondents a sum of Rs.7770/- per month unconditionally.

(iii) The arrears of Rs.3,35,000/- shall be paid by the Appellant to the Respondents through the learned Advocate for the Respondents within a period of eight weeks from today. The Respondents shall receive the same without prejudice to their rights and contentions including the contention regarding the interest for a delayed payment.

4. The impugned order shall stand substituted by the above order.

5. Needless to say that in the event the Appellant does not pay the aforesaid sum of Rs.3,35,000/- to the Respondents through the learned Advocate for the Respondents within a period of eight weeks from today,

this order itself will stand recalled.

6. Having regard to the facts and circumstances of the case, as the Respondent-Plaintiff is aged about 68 years, hearing of the suit is expedited.

7. The Defendant (Appellant herein) is granted time to file Written Statement on or before 10th July, 2006. Both the parties are agreeable to have the evidence recorded by Commission and would obtain an appropriate order in that behalf from the learned Single Judge.

8. Appeal stands disposed of in the above terms.

(DR.S.RADHAKRISHNAN, J.)

(S.J.VAZIFDAR, J.)